

Solidarity and Maintenance Obligations in the Family – Old and New Elements in the New Hungarian Civil Code

I Principle of Solidarity

Solidarity is a principle which governs several regulations in the field of family law as is self evident. *Family members are normally expected to support each other* according to the new Hungarian Civil Code,¹ namely Act No. V. 2013 (NHCC), as they were expected to do so in the frames of the Family Act, as well. The Fourth Book of NHCC gives detailed rules on family law which was regulated in an independent Act, the Family Act, namely Act No. IV 1952 on marriage, family and guardianship before the NHCC.

Family members' solidarity may be interpreted both *vertically and horizontally*. Vertical family relationships are generally those between relatives in a direct lineal way, namely parents and children, grandparents and grandchildren. Horizontality occurs between partners, whether spouses or partners outside marriage. There are two legitimate partnerships without marriage in the Hungarian law, cohabitation and registered partnership.

The paper examines solidarity in vertical and horizontal family relationships and briefly provides a rather wider aspect to the whole issue. As solidarity exists or is presumed to exist as a moral intention and not only as a legal obligation, this paper is intended to give a snapshot of the demographic background both from the European and Hungarian viewpoint. The aim of the introduction and analysis of maintenance regulations in the NHCC is to point out the close connection between the maintenance rules in the NHCC and those in the Family Act while emphasising some new elements. The main types of family law maintenance are considered as maintenance between relatives, former spouses and child maintenance, including the maintenance of a grown-up child who pursues further studies. Finally, one issue with regard to the Principles of European Family Law is mentioned. Although this contribution is limited to very few other-than-law aspects, the issue of family maintenance is an *interdisciplinary* one as, for

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¹ 2013. évi V. törvény a Polgári Törvénykönyvről, (Act V of 2013 on Civil Code, NHCC).

example, labour force participation, the state management of invalided and/or aged persons, gender issues and the wealth of several layers of society are to be evaluated when dealing with maintenance obligations of family members from a legal viewpoint.

II Solidarity in Vertical and Horizontal Family Relationships

1 Solidarity in Verticality

Concerning solidarity in vertical family relationships, the *maintenance of children* has to be emphasised. Although the *Convention on the Rights of the Child 1989* does not deal with maintenance obligations as a civil law or family law obligation, this international document (while being the most important such convention on children's rights) contains several articles which reinforce the parents' and the families' responsibility along with the state's responsibility for child maintenance. According to Article 3(1), in all actions concerning children the *best interest of the child* shall be of primary consideration. States have to undertake to ensure the child receives the protection which is necessary for their well-being, taking the rights and duties of their parents, legal guardians, or other individuals legally responsible for them into account and, besides, take all appropriate legislative and administrative measures, as it states in Article 3(2). The *parents have joint responsibility* for the upbringing and development of the child according to Article 18(1) and, in the background of this common responsibility, there is the *obligation of the state* to ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, etc. as per Article 3(3). It is to be emphasised that both partners have responsibility towards their child and it does not mean only their joint parental responsibilities but also their joint maintenance obligation. The state is also an obligor behind the parents; it is better to state that their maintenance obligations exist beside each other. It is only to be mentioned that, in several situations, the responsibility of the state comes to the foreground e.g. in the case of a child being deprived temporarily or permanently of their family environment which leads to the alternative care of the state or in the event of the amounts of maintenance being totally unenforceable.

2 Solidarity in Horizontality

Concerning partnerships, solidarity is connected *primarily to marriage* as society regards it as the most prestigious institution among the forms of partnership. Spouses are responsible for each other, even if marriages do not by all means last until the death of either spouse. This mutual responsibility may precede the principle of self-sufficiency after divorce and win over self-sufficiency as shown also by the NHCC, according to which the responsibility may remain even after divorce in form of maintenance of one's former spouse.

Although marriage creates a homogenous category, this homogeneity has been questioned across Europe because of the very high rate of *divorce*. The consequence of that has been drawn

also in the NHCC. If the spouses' community of life lasted less than one year and they are without a common child, maintenance may in principle be demanded for as long as their community of life.²

While spouses' right to maintenance after divorce is unquestioned, the issue whether cohabitants should be responsible for each other in a legally supported, normative way is really a controversial one. Regarding the other *non-marital partnership*, registered partnership, the registered partners' maintenance obligation is analogous to that of spouses according to Act XXIX of 2009, which has been in force for more than five years now.

III Solidarity upon Moral Intention vs. Normative Rules on Maintenance

Although solidarity is expected by legal rules primarily in the form of maintenance, family members *generally support* one another without referring to an exact rule. In many families, maintaining each other exists as a moral obligation without their awareness of the concrete legal rules. Sometimes the performance of maintenance obligations is based upon the concerned parties' agreement, e.g. the spouses or former spouses may agree on maintenance or parents may agree on child maintenance. As maintenance is often performed without any legal pressure, it is important to study how solidarity as a social attitude or *attitude of family members* functions in societies.

Intergenerational bonds are rather strong in Europe nowadays too, according to some European research. Intergenerational solidarity is measured by so-called 'spatial closeness' in a study which was undertaken in western societies in 2008.³ *Spatial closeness* means the distance between adult family generations' households.

Although different generations of adult family members residing together seems to have decreased, their households are mostly in each other's neighbourhood. That result has led the researchers to a conclusion which is in favour of solidarity, namely that adult family members live within a relatively small distance, which provides the opportunity for them to support each other.

With regard to Hungarian demographic and sociological research, some results in connection with the issue of solidarity were published in the early 2000s.⁴ These studies analysed social integration and family solidarity and dealt with the influence of social changes on family solidarity. In the 1980s, *family cooperation* seemed to be strong in Hungary and that continuity

² NHCC, s 4:29 para 3.

³ Bea Verschraegen, 'Intergenerational Solidarity' in Hugues Fulchiron (ed), *Les Solidarités entre générations. Solidarités between Generations* (Bruylant 2013, Bruxelles, 35–46) 35–36. Consider also Jordi Ribot, 'Refamilialisation of Care and Support: Scope and Limits of Family Solidarity in Ageing Societies' in Hugues Fulchiron (ed), *Les Solidarités entre générations. Solidarités between Generations* (Bruylant 2013, Bruxelles, 35–46).

⁴ See, for example, Utasi Ágnes, 'A társadalmi integráció és szolidaritás alapjai: a bizalmas kapcsolatok' (2002) 24 Századvég 3–25.

and stability of family solidarity has remained. The overwhelming majority of people questioned during the research reported that they turned to one of their family members in case of need. It is another issue that the *circle of family members* who might be requested to provide help or support *has changed* between the 1980s and the early 2000s. While spouses were the first who were expected to provide support earlier, the stability of marriages has decreased subsequently and *child-parent relationships have become more important* with the result that parents tend to hope for solidarity and support from their child and children, especially when these are unmarried.⁵

The *increase in the number of single persons*, which could be seen and measured already in the early 2000s, has reduced the circle of those providing support for their family members.⁶ According to the sociologists, the family has preserved its character as a consuming unit, in the context of which mutual everyday support still functioning but in case of real need this unit does not work particularly satisfactorily.⁷

IV Maintenance Regulation in the NHCC

Maintenance was regulated in the Family Act and is regulated now in the Fourth Book – Family Law Book – of the NHCC. There are elements which are quite familiar from the earlier family law maintenance. The amount of these elements is rather great, as *no huge change* has happened in the *concept* of maintenance regulation. There are new elements but these are coming from the new structure of maintenance regulations or mean the codification of crystallised judicial practice.

The *structural modification* is a rational one. The Family Act contained spousal maintenance and the maintenance of relatives containing child maintenance in a detailed way. The NHCC has preserved the regulation of the maintenance of relatives and also spousal maintenance but has tended to *bridge a gap* between the different maintenance forms. This connection seemed to be necessary as new forms of maintenance have been introduced, namely maintenance of former cohabitants and maintenance of grown-up children who pursue further studies. Maintenance of a grown-up child who pursues studying was not unknown in Hungary, as these claims were adjudged, but no independent legal rule was applied. The same cannot be said about maintenance of former cohabitants as this is a completely new legal institution in Hungary. According to the regulations of the new structure of family maintenance, there are *general rules* and *some special regulations*. There are special maintenance rules for spouses, former spouses, former cohabitants, children and grown-up children pursuing further studying. The general background rules on family maintenance are contained under the title of maintenance of relatives.

⁵ Utasi Ágnes, 'Társadalmi integráció és családi szolidaritás' (2002) 3 *Educatio* 384–403, 388–389.

⁶ Utasi (n 5) 391.

⁷ Utasi (n 5) 398.

It has to be emphasised that, although maintenance of children is regulated in the framework of maintenance of relatives by special regulations, this kind of maintenance is the one which induces *many legal suits*. The *extreme character* of child maintenance is shown not only by the fact of being the subject of the overwhelming majority of judicial cases on maintenance but also by the fact that the child's best interests is the governing principle in this field. While there are more or less the same, or at least similar, requirements for the maintenance of partners and relatives, child maintenance is regulated in a unique way.

1 Preserved Elements Concerning Maintenance of Relatives

As NHCC mentions the maintenance of relatives⁸ it is necessary to make it clear who belongs within the circle of relatives. Family law and civil law deal with different circles of people as relatives, and the circle of next of kin is to be distinguished. The NHCC specifies who belongs to the latter category. Being a relative is defined in the Family Law Book and covers a relationship which comes into being *via affiliation or adoption*. The maintenance of relatives may relate to people who are relatives via affiliation or adoption as *direct line relatives*. *Collateral relatives* are not obliged to support each other except in one situation, namely if the minor has no parents and only their brother or sister, who is not a minor, can maintain this child. Neither the Family Act nor the NHCC made this support obligation wider and even this obligation of the older brother or sister to maintain their minor brother or sister depends upon the fact of whether the older brother or sister is able to pay.⁹

As the minor child's right to be maintained is regulated by special rules, just as with those children who pursue their further studies, the general regulations on relatives' maintenance *primarily affect parents and grandparents and children over 18*. Concerning parents, the Family Act already contained a support obligation falling on step-parents. The definition of *step-parent* has been preserved in the NHCC. According to its attitude, a step-parent is a person whose spouse has a minor child and they live together in one household.¹⁰ The child's parent's cohabitant cannot fill the status of step-parent as it can be only their spouse, and living together with the child is a necessary requirement as well. The step-child also has a maintenance obligation towards their step-parent according to the principle of mutuality.

a) Requirements of maintenance between relatives

The requirements of maintenance have been also preserved in the NHCC, as these *requirements* are known in the Hungarian family law regulations and judiciary for several decades. The requirements are partly on the claimant's side and partly on the debtor's side. The *lack of means*, a situation *which has been brought about through no fault of the claimant's own* and the *lack of unworthiness* have to exist on the claimant's side. The debtor has to be in a situation to *be*

⁸ NHCC, s 4:194–4:222.

⁹ NHCC, s 4:197.

¹⁰ NHCC, s 4:198.

able to pay. If a family member is intended to claim for maintenance from their relative, and in this general situation this person is a parent or grandparent or an adult child, he or she has to prove the lack of means and the lack of having no fault. Unworthiness has to be proved by the debtor as like as the fact that she or he is unable to pay.

Of course, claiming for maintenance before court is the last step in the absence of an agreement. As has already been mentioned, family members often support each other without any legal agreement or legal title. Even if they make their maintenance formal, the *judicial route can be preceded by an agreement on maintenance*. Although this agreement is a contract, the Hungarian commentary literature does not use the word ‘contract’ but ‘agreement’, with the aim of making a sharper differentiation between a contract on maintenance regulated within the regulation on obligations and a contract in the NHCC, and an agreement between family members on their default maintenance obligations.

b) Lack of means and faultiness on the claimant’s side

As family law maintenance is based upon the law and such an obligation is not created by the parties’ contract, lack of means is a basic condition for being able to claim successfully for maintenance. Concerning the regulation method of the requirements of maintenance, no important change has been codified. A main feature of this method seems to be a laconic form, as the NHCC does not go into further details but only fixes *the lack of means as a basic condition*. This requirement is not a detailed one but has been *crystallised in the judiciary*. Some factors can be underlined, such as the age of the claimant, their state of health and illness. Being elderly is not a fact in itself upon which maintenance can be successfully required but being unable to work due to chronicle illness may be grounds for that and gives in general a basis for maintenance for an indefinite period of time. The claimant’s *unemployment* is a debated issue as, according to some viewpoints, solidarity is a strong obligation even in that situation while others state that supporting the jobseeker is not a family member’s task but that of the state. The complex character may be seen well at this point. Later on, when studying spousal maintenance, this problem will be presented in more detail as the judiciary has not dealt with the issue only in general terms.

It is a cornerstone in judicial practice that lack of means has to be assessed in an *objective way*. The requirement of lacking means which has been *brought about through no fault of the claimant’s own* is a *subjective factor* in close connection with other requirements. ‘No fault’ is analysed on the basis of the claimant’s behaviour. It is ascertained whether the claimant has exhausted all their resources, i.e. they have done everything which may be expected. The exact level of expectation, which means *social expectation*, cannot be fixed as it depends on the special circumstances of each case. If the family member requiring maintenance does everything to find a new job after their working ability has changed it may lead to a lack of their own fault.

c) Lack of unworthiness on the claimant’s side

Another *rather subjective requirement* is the lack of unworthiness on the claimant’s side, which has to be adjudicated in an objective way as well. In the course of taking the claimant’s behaviour into consideration, a general social adjudication serves as guidance. It is mentioned consistently

in the commentary literature that unworthiness *does not mean fault* as, according to the traditional attitude to being at fault, only the behaviour of one party is to be examined. When unworthiness is dealt with, unambiguously *both parties' behaviours* are to be analysed with the aim of drawing conclusions regarding the mutual influence of both behaviours. The NHCC, in line with the rules in the Family Act, contains a direct rule concerning the unworthiness of the claimant if they are a parent. If the *parent* fulfilled their obligation to maintain and care for the child and provided for their upbringing, the child can refer to the unworthiness of the parent only in the event of the parent's *extreme misconduct* against the child.¹¹

d) Ability to pay on the debtor's side and ranking of maintenance claims

Even if all requirements are fulfilled, the court cannot order maintenance if the debtor is unable to pay. The principle of *self-sufficiency* functions even if family law maintenance is regulated in a rather broad way. Although this principle is not a governing one where the claimant is a child or a child over 18 pursuing further studies, in case of adults, whether in the status of parent or (adult) child, maintenance *cannot be detrimental to the debtor's own standard of living* excepted only for child maintenance relating to minors. The court takes into consideration the debtor's ability to work, their real earning capacity and their assets. Whether the debtor is expected to use their assets to fulfil the maintenance obligation depends on the type of tangible assets.

The ability to pay is in close connection with the *ranking of maintenance claims*. The debtor can prove that another person has priority of claims for maintenance. Moral obligations are not taken into attention but a legal obligation to maintain a family member may serve as a basis for avoiding maintaining a family member who stands further down the ranking. The debtor's *minor child has ranking priority*. Adult children who are able to earn their living rank ahead of a claim of a divorced spouse or parent if they pursue further studies. The spouse and the former spouse follow the child in second place. Relatives, such as a parent or adult child who lack means follow only the partners. Nevertheless, if there is not only one adult family member lacking means and neither of them has agreed with the debtor on maintenance, the court has some *discrete power* on whether the former spouse or the parent should be the first to be supported by the debtor.

2 Preserved Elements Concerning the Maintenance of Spouses and Former Spouses

In the event of marriage, not only the spouse with whom the community of life is maintained who has to be supported but also a spouse with whom community of life has ceased but they are not divorced yet and, besides, the former spouse.¹² Spousal maintenance means *mutual obligation* in the NHCC, just as it was regulated in the Family Act. As with the maintenance of

¹¹ NHCC, s 4:194 para 3.

¹² NHCC, s 4:29–4:33. Consider Orsolya Szeibert, 'Family Solidarity in Partnerships: Maintenance of Former Spouses, Registered Partners and Cohabitants in Hungary according to the Effective Rules and in the new Civil Code' in Bill Atkin (ed), *International Survey of Family Law* (Jordan Publishing Ltd. 2010, Bristol, 179–187).

relatives, the *agreement* of the claimant and debtor plays an important role also in the field of spousal maintenance. If the spouses *divorce upon mutual consent* they have to agree on spousal maintenance as an ancillary issue. The Family Act also required an agreement on maintenance of the former spouse in the event of divorce upon mutual consent and it has not changed in the NHCC. In the course of the codification, the question emerged whether the requirement of agreeing on maintenance is really so important but later on the ancillary issues remained intact in relation to this element. Nevertheless, according to the exact text of the NHCC, the spouses have to agree on whether there is a claim for that on the side of either spouse.¹³

With regard to the requirements detailed above, the *same requirements* have to be fulfilled also with regard to a spouse's claim. As spousal maintenance cases *occur more often* before the court than maintenance of relatives, the judiciary has developed much better in this field. The requirement of lack of means, the lack of 'faultiness' and lack of unworthiness just as the debtor's ability to pay have not changed. The text of the NHCC nevertheless reflects some developments in the judiciary. This is shown by the fact that, while the phenomenon of the spouse's unworthiness was not regulated in the Family Act but only detailed in guidance for court, the content of this guidance has been lifted into the NHCC.

3 Preserved Elements Concerning Maintenance of Children and Grown-up Children Pursuing Further Studies

Child maintenance has been traditionally regulated as a unique form of supporting a family member, as the child's best interests is the governing principle in these cases. The requirements have been preserved *basically unchanged*.¹⁴ There is a *presumption* that a child below 18 lacks means and they are the first in the maintenance ranking. *A child cannot be unworthy of maintenance*. Concerning a child over 18 who pursues further studies, the NHCC has preserved many basic elements which have been crystallised in the judiciary. The importance of the *judicial practice* is explained by the fact that this kind of maintenance had not been regulated in a detailed way at all. However, the more children who began to study after 18, the more such cases emerged before the courts.¹⁵ A directive of the Supreme Court had to be applied and, during the codification process, the main content of the directive was lifted into the NHCC.

This adult child's maintenance is legally '*between*' the maintenance of adult family members and that of minors. The requirement of lack of means is caused not by their incapability of working but by the fact that the *child continues their training and education*, providing skills and qualifications for the child's planned career. Training covers a wide range of education, such as university studies or post-secondary vocational education. The award of a Bachelor's degree is a legitimate reason to be maintained, as parents are expected to maintain their child during this

¹³ NHCC, s 4:21 para 3.

¹⁴ NHCC, s 4:213–4:218. and s 4:219–4:222.

¹⁵ Consider Orsolya Szeibert, 'Maintenance of studying grown up children in Hungary' in Hugues Fulchiron (ed), *Les Solidarités entre générations. Solidarities between Generations* (Bruylant 2013, Bruxelles, 527–533).

period. The award of a Master's degree can also be a proper basis for being maintained but the same cannot be said about participation in a Doctoral programme. As a former spouse cannot demand maintenance upon the fact that their Doctoral programme makes it impossible to earn money, a grown-up child cannot do the same, either.

According to the NHCC and the judiciary, under the Family Act the child has to begin his or her further studies *without any delay* after secondary school. If the child leaves out a longer period before beginning these studies the right to be maintained depends upon special circumstances and acceptable reasons. The time which can be omitted is a limited period. In general, only maintenance during the course while acquiring the *first profession* may be requested. A special further requirement on the side of the claimant is that the adult child has to be able to study. If she or he proves *to be unfit* to study, the right to maintenance may even cease. The proof of being unfit may also be prolonged studies. The child has to study as well as they can with the aim of *getting a scholarship or a reduction of the tuition fees* which increase their parents' burden.

4 New Elements in Family Maintenance

In the following, *two elements* are emphasised as brand new possibilities, namely the *maintenance of a former cohabitant* and the appearance of the so-called *clean-break principle*.

a) Maintenance of former cohabitant

Neither the former Hungarian Civil Code (Act IV of 1959 on the Civil Code, hereinafter referred to as FHCC) nor the Family Act contained any rule on cohabitants' maintenance obligations. The Family Act even did not deal with this kind of partnership. The FHCC contained some laconic regulations, including the definition of cohabitation. The NHCC has taken over this *definition*. So, according to the Hungarian legal attitude, cohabitants are two people, either different or same-sex persons who live together, without entering into a marriage or a registered partnership, in a common household, in an emotional fellowship and economic partnership (community of life). They cannot be related to each other in direct line and cannot be siblings or half-siblings and neither of them can live at the same time in a marital community of life, a community of life within a registered partnership or in another cohabitation with a third person.¹⁶

The question whether cohabitation should be introduced into the new Civil Code was *hotly debated*.¹⁷ At last cohabitation is regulated in the NHCC, however in a *unique structure*. Cohabitation itself is a contract regulated in the Sixth Book with some so-called family law consequences, which are in the Fourth Book. These are the maintenance of the former cohabitant

¹⁶ NHCC, 6:514 para 1.

¹⁷ Consider Orsolya Szeibert, 'Unmarried partnership in Hungary – Today and de lege ferenda' (2006) XLVII ANNALES UNIVERSITATIS SCIENTIARUM BUDAPESTINENSIS DE ROLANDO EÖTVÖS NOMINATAE – SECTIO IURIDICA 315–339.

and the possibility of claiming for the judicial arrangement of the use of the common flat. Family law impacts are limited, with two legal consequences which are basically possible only if the partners *have lived together for at least one year and they have a common child*. With regard to the maintenance of cohabitants it means that, even if the cohabitants have lived together for many years but childless, neither of them has a right to demand maintenance.

New rules on the maintenance of cohabitants are *modelled* upon the spousal maintenance rules. The requirements are just the same, nevertheless a bit more severe than with regard to spouses with the aim of preserving the primacy of marriage.

One aspect of living in cohabitation has to be mentioned in connection with spousal maintenance. According to the Family Act, one cause of *termination of spousal maintenance* was entering into a new marriage but formally entering into cohabitation did not result in the entitlement to maintenance ceasing. The NHCC has created a non-traditional solution, as the entitlement to spousal maintenance ceases not only when entering into a marriage but also if the claimant lives in cohabitation. The same is true for cohabitants, as the entitlement to cohabitants' maintenance ceases if the claimant marries or lives in cohabitation. There is no judicial practice concerning a situation when the former spouse as debtor refers to the fact that the claimant, their former spouse, lives in cohabitation, so terminating the debtor's supporting burden. If the claimant denies this statement the proof of an upholding cohabitation will be hard.¹⁸

b) Clean-break principle

Another new element is the regulation of the so-called clean-break principle. According to this solution, maintenance can be performed in a *lump sum or by delivering a special asset*. Although maintenance has a character of *alimentation*, namely providing the claimant with subsistence, the newly introduced opportunity shows another trend. When paying in a lump sum, the family members as claimant and debtor are no longer connected to each other via regular payments. It seems to be positive for former spouses and cohabitants, especially if their partnership is really broken. The *court cannot order* this kind of payment *ex officio* so the decision on whether the parties wish a lump sum payment is up to them. However, if either former spouses or former cohabitants agree on that, this agreement has a rigid consequence, namely it excludes the possibility of demanding maintenance later on. By contrast, when there is a periodic payment, either the claimant or the debtor may even turn to court to change the conditions of payment.

Lump-sum payment for child maintenance is regulated differently. The *parents can agree* on the measure of child maintenance and the method of payment and, if they divorce by mutual consent, they have to agree on it even if they have joint parental responsibilities after divorce. Lump-sum payment was not regulated before and the NHCC allows that, however, in a *rather strict way*. As with spousal maintenance, either a lump sum payment or the delivery of a special asset may replace regular payments. Such an agreement is only valid if the *period* for which the

¹⁸ Consider about the judiciary concerning cohabitation in Hungary Orsolya Szeibert, 'Unmarried Partnerships in Hungary' in Katharina Boele-Woelki (ed), *Common Core and Better Law in European Family Law* (Intersentia Publishing 2005, Antwerp, 313–333).

maintenance of the child is covered by the amount of money or asset is fixed in the agreement and the *guardianship authority or court approves it*. Although the main principle is that no maintenance may be claimed later on, there is an exception in the child's best interests. Although there is a valid agreement, the court may order periodic payments of maintenance *later* if the circumstances have substantially changed in an unforeseeable way and either the child's interests or either parent's interests are seriously damaged.

The lump sum payment as the manifestation of the clean-break principle is hardly interpretable concerning *child maintenance*. While it has a rational value for former spouses and cohabitants, in that they are no longer connected with each other by regular payments, this cannot be an aim where the parents are to pay maintenance for a child to whom they remain parents and also their continuous contact with the child and the separately living parent is expected. This solution of paying maintenance does not encourage the parents or either of them to 'get rid of' the child. Nevertheless, there seems to be a demand for such a possibility in reality, especially when there is one family asset, namely an immovable which is the family home. If this immovable is the joint property of the spouses and one of them remains there with the child or children, they usually do not have enough other assets to buy the leaving spouse's share of the property.

5 Lump Sum Payment in the Principles of European Family Law Regarding Maintenance Between Former Spouses

The first *Principles of European Family Law, Principles regarding divorce and the maintenance obligation of former spouses* were published in 2004.¹⁹ The Organizing Committee of the Commission on European Family Law, which is responsible for writing these principles upon wide and deep empirical research in several European legal regimes, drew the conclusion that a lump sum payment is possible in *most of the national systems* which were examined.²⁰ According to *Principle 2:5 (2)* about the method of maintenance provision, they established that the competent authority may order a lump sum payment upon request of either or both spouses, taking the circumstances of the case into account. The court will order, as can be read in the comment to the Principle, the lump sum payment if it is reasonable. Although at that time the examined European jurisdictions made this solution possible, the Principles have gone further as, according to them, the court should order lump sum payment not only upon the parties' common request but also upon either party's request. There seemed to be a *European trend* towards an attitude that either the claimant or the debtor might wish to terminate their connection with the other. The Hungarian attitude has not gone so far concerning the regulation of spouses' maintenance, as the NHCC provides the opportunity of a clean break only if the parties agree on that.

¹⁹ Katharina Boele-Woelki, Frédérique Ferrand, Cristina González Beilfuss, Maarit Jantera-Jareborg, Nigel Lowe, Dieter Martiny, Walter Pintens, *Principles of European Family Law Regarding Divorce and Maintenance Between Former Spouses* (Intersentia 2004, Antwerp).

²⁰ See notes 19, 97, 99.